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ABSTRACT

Competition between cable television systems (CATV) and regular broadcast stations concerns pay-TV and distant signal importation. The pay-TV that CATV provides competes with the networks by "siphoning" away sports and feature films, while the distant signals that CATV imports to a local market "fragment" the local audience and thus reduce the value of a local broadcast license. The networks have been able to fight the threat of siphoning by using "exclusive" contracts to secure the broadcast rights to feature films and sports events; but as more viewers subscribe to CATV services, CATV will increase its ability to bid for and to acquire similar rights. The Federal Communications Commission (FCC), which previously protected networks and local stations from CATV competition, has trended toward deregulation of CATV during the past few years. Three changes that the FCC has initiated reflect this trend: changing the criterion for local broadcast protection from signal strength to standard distance limits, endorsing a policy that enables "superstations" (independent local stations picked up by CATV) to compete directly with networks for advertising dollars, and shifting the burden of proof in legal cases about signal importation from the cable systems to the local stations, who must now prove that economic hardship results from signal importation. What remains to be seen is whether these trends and changes in broadcast quantity will have any effects on broadcast quality. (RL)

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FREEDOM OF INFORMATION CENTER REPORT NO. 399

CATV AND THE BROADCASTERS

This report was written by Bill Flanagan, an M.A. candidate at the University of Missouri School of Journalism.

When some residents of Sussex County, Del., turn on their television sets, they may receive broadcast signals from stations in Baltimore, Washington, D.C., and Salisbury, Md. If they subscribe to a cable television service, they will receive stations from Baltimore, Washington, D.C., and Salisbury, Md. The Sussex Countians are caught in the middle of the controversy over the regulation of CATV.

A group of Delawareans asked (Washington **Post**, 3-22-78) the Federal Communications Commission in 1978 to stop regulating cable television entirely, especially in Delaware. The second smallest state is one of only two in the nation with no over-the-air commercial broadcasting stations of its own. Sen. Joseph Biden, D-Del., told the commission:

> Baltimore offers absolutely no coverage of Delaware. The least I could conscientiously accept is a break-up of the hold on the many Delaware viewers who receive only the Baltimore perspective; that is, allowing a Philadelphia station to be carried by cable for the areas that do not now have the benefit.

Viewers in northern Delaware can receive the Philadelphia stations as well as Baltimore signals over the air.

But FCC Broadcast Bureau Chief Wallace Johnson replied to Biden by saying the Delaware CATV systems can't carry Philadelphia because the move would hurt one or more of the Baltimore stations, which are received over the air by some Sussex County residents. Johnson's opinion points up one of the major topics of controversy in CATV regulation in 1978: Because the Baltimore stations are closer to southern Delaware, those stations receive protection from the importation of distant signals from Philadelphia. Unfortunately for viewers in the area, for historical and geographic reasons Philadelphia stations are more apt to provide programming related to Delaware. But the regulatory world in broadcasting has begun to change in the late '70s. Viewers may have some relief from these kinds of FCC restrictions at the same time they are offered a wide variety of choices in communications channels in the future.

To Deregulate or Not to Deregulate

Cable television was (Boston **Globe**, 3-6-77) 28 years old in 1978. According to industry figures, about 85 percent of the cable systems are on the fringes of or outside the 25 major conventional TV markets in the United States. But CATV is beginning to penetrate the large markets. As its subscriptions approach the "magic" 30 percent projected by the networks for 1981, it will more and more challenge over-the-air networks for movies and sports. As CATV comes to dominate the outlying areas and smaller broadcast markets, it may pose a threat as well to the small town broadcasting stations. These fears fueled the fire over the regulation problem in 1977-78.

There are two primary ways CATV is likely to affect broadcasters as it grows the next several years. "Pay-TV" concerns the networks, "distant signal importation" the local broadcaster. Pay-TV involves an extra fee the cable subscriber pays to view a special program that originates with the CATV operation. Distant signal importation involves a cablecaster who brings television signals from other cities into the local market in competition with the local broadcaster. Each has potential to affect over-the-air broadcasters economically, primarily as competition for the television viewers. Broadcasters feel CATV will "fragment" the local market and consequently reduce the value of the license. Networks look toward a time in the not-too-distant future when CATV networks will be able to outbid broadcasters for first-run theatrical films and major sports events.

Broadcasters' fears of the economic threat of CATV are not without merit. From service to 2.1 million subscribers in 1966, CATV has increased (New York **Times**, 5-4-78) sevenfold. By the end of 1978, the industry estimated, 14 million homes would be wired, serving 42 million persons. The CATV industry expected its revenues to pass the billion dollar mark in 1978. And if the industry can meet its goal of 30 percent penetration of American homes by 1981, CATV officials expect for the first time to become an important rival to over-the-air television.

CATV has capitalized especially in the last decade on

Summary: The competitive battle between cable television and broadcast stations is being fought on two fronts in the United States in 1978: pay-TV and distant signal importation. Pay-TV most directly competes with the networks by potentially "siphoning" away sports and feature films. Cable systems that import distant signals could potentially "fragment" the local audience. Both areas are more competitive than ever before, thanks to recent court and FCC decisions.

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Americans' love affair with their television sets. The average home has (Boston **Globe**, 3-6-77) the television set on six-and-a-half hours per day. That adds up to 2,200 hours per year, or 200 more annual hours than the average American works. By comparison, Americans spend about 200 hours each year reading newspapers, 200 reading magazines and about 10 hours with books. Since television so dominates the lives of American families, it comes as little surprise that with the chance to have even more channels they will pay anywhere from six to 30 dollars per month.

The selling of cable has relied on what **Celebrity** editor James Monaco calls "blue-sky." "Cable advocates promised a media millennium with enough channels for all minority viewpoints and tastes and, eventually, a whole host of electronic services."[1] That millennium has yet to develop. Even urban penetration is far away. Boston, Chicago and Washington have no inner-city cable service, and metropolitan service is limited in other major cities.

CATV's slow penetration of urban markets can be traced (Boston **Globe**, 3-6-77) to two major factors: the high cost of running cable and the legal and competitive pressures from existing media. To achieve 30 percent saturation by 1981, the CATV companies will have to spend three to four billion dollars. Present cable investment stands at about one billion dollars. The costs have turned some cities away from a "wired" future. The city of Boston turned down a proposal to install CATV in 1973, because wiring the city would have cost 15 to 20 million dollars.

Many CATV owners insist they ultimately will provide a variety of programming and viewpoints. That goal seems critical to the success of CATV. Summarizing prospective effects of deregulation, Yale Braunstein says extra conventional programming frequently has little effect on total audience size, particularly in a market already served by several network and independent stations. But one study on the effect of televising the Watergate hearings has shown that programming "markedly different from the standard fare can attract a significant number of new viewers and increase the total television audience."[2]

Manhattan Cable, for example, is already faced with the problem of trying to retain viewers. The company turned a profit in 1977, one of the first major urban cable systems to do so. But CATV companies can face a "drop-off" rate of about 23 percent a year: Viewers decide to drop their subscriptions. To meet that economic threat, Manhattan Cable has turned to advertising on two of its channels. It offers sponsors a potential audience of 350,000, a "magazine-sized" audience. The CATV system has drawn a quarter of a million dollars in advertising revenues without any full-time salespersons.[3]

These developments lead James Monaco to believe CATV will wind up with an economic structure like magazines.

> The drop-off problem is directly parallel with magazine renewal efforts. Future income will be derived from a combination of paid advertising and subscription fees, plus "individual copy" sales.[4]

A demographic approach to television has some drawbacks. It poses problems for the minority groups that no advertiser wants to reach. It may mean more diversity of programming for different segments of the middle class already served generally by network television. There is the potential to turn the poor even more into second-class citizens as far as television is concerned.

Despite public service implications of the growth of CATV, the broadcasters have good reason for economic fears as well. As the industry moves into 1979, the FCC is looking formally into the economic implications of CATV. Commission Chairman Charles Ferris has called (**Wall Street Journal**, 5-3-78) on the CATV industry to exploit "the substantial number of viewers with specialized interests" left unsatisfied by a broadcast TV industry "caught in the iron grip of the rating competition." Broadcasters claim the diversity sought by the FCC will never come about, and they have fought CATV because of its potential to drain conventional programming. Through pay-TV and distant signal importation, broadcasters feel CATV will provide them with "unfair competition" in the future.

Pay-TV and the Networks

Pay-TV is beginning to pose a competitive threat to the present structure of network broadcasting. It carries a threat to local affiliates because of the potential to undermine the networks. Six hundred CATV systems offered pay-TV channels in 1978, with 1.6 million subscribers in 46 states. Its revenues are approaching the 200 million dollar mark per year. About 25 percent of the total CATV subscribers also buy some pay-TV service.[5]

To some degree all kinds of CATVs are "pay cable." All CATV systems charge some kind of subscription fee, usually on a monthly basis, for the service. But the pay-TV the networks fear is of a somewhat different kind. The subscriber pays his standard monthly subscription fee and pays another fee for a channel of recent feature films, special programming or sports. "Home Box Office" and "Showtime" are two firms that syndicate such a special pay channel nationally. With the use of satellite-to-CATV connections, the pay-TV firms can join a national network of special programming, all for an added fee. Some services charge for each special program viewed, others have a standard fee for all the programming on a given pay channel.

The networks are concerned about pay-TV because the number of CATV viewers needed to outbid the networks for rights to a major motion picture is relatively small. CBS President Arthur Taylor said in 1975 that the network fears are justified:

> . . . the time when pay cable will be able to outbid a network for a movie is likely as close as five years down the road. . . .
>
> With its best and most popular programs lost to pay cable, free television would have far less money to spend on the more expensive but less profitable types of programing which the public has come to depend upon — news, public affairs, children's programs and so forth.[6]

Taylor said in 1978 that the time is approaching when families will be able to view major attractions only by going to the expense of a "large and continual drain on their family income."

> The form of pay television to which we are specifically opposed is that by which free television's attractions are to be diverted to pay cable television. . . . When gasoline is siphoned from one car to another, the car that receives the fuel may work beautifully, but the other is at a severe disadvantage.[7]

In one example of the possible effects of siphoning, CBS

pointed to the telecast of the Frazier-Ali heavyweight title fight in 1971. According to the network, about 1.5 million persons paid more than $16 million to see the fight on closed circuit television in the United States and Canada. Overseas, hundreds of millions saw it on over-the-air TV, but they returned only a fraction of that revenue to the promoters.[8]

Others insist the networks have exaggerated their fears. Ralph Baruch, the president and chief executive officer of Viacom International, testified before the House Communications Subcommittee in 1976 that if up to 5 million homes were to subscribe to pay cable, an increase of 700 percent over the number of viewers at that time, without expansion of commercial television audiences, fragmentation would amount to only six-tenths of one percent.[9] An extremely large proportion of the American viewing public would have to subscribe to CATV to significantly cut into the tens of millions tuned into the networks on any given night.

The small number of potential viewers on any given night still has the economic potential to challenge the networks. Although fragmentation may not threaten the networks, National Association of Broadcasters President Vincent Wasilewski cautions that there is a real threat of siphoning, as evidenced by the Frazier-Ali telecast. And the NAB president says (Washington **Star**, 8-7-75) siphoning is a disservice to the over-the-air audience.

> . . . progress in communications historically has always resulted in a bigger audience at a lesser cost. Pay cable results in a smaller audience at a higher cost. Our broadcasting system could have started out as a pay operation. . . . [A]s late as 1949, there were many people who thought advertiser supportive television could not be successful, and they said the only way to go would be through a pay operation. So, I would say that pay cable represents the antithesis of progress in the communications art.

Competition and 'Exclusivity'

One way the networks have been able to fight the threat of siphoning is through the use of the "exclusive contract." It works well in the battle for broadcast rights to both feature films and sports events. The CATV firms have begun to challenge these "exclusive" contracts in the courts, and this new litigation may mark the next direction for cable-broadcaster affairs.

A recent flare-up over exclusivity occurred in 1977 when Warner Cable in Columbus, Ohio, decided to telecast two Ohio State University football games. Columbus is an ideal market for such a telecast. "People here go stark raving mad on Saturdays," said (**Wall Street Journal**, 9-26-77) cable chairman Gustave Hauser. "Football is the thing here. They want these games. We have a facility to present these games, which aren't being televised anywhere. We're only talking about the games nobody wants."

ABC-TV may not have wanted the Ohio State games, but it did have an exclusive contract for college football with the National Collegiate Athletic Association. The contract does not permit local broadcast of football games that conflict with a network college football broadcast. The NCAA approved the Columbus cablecasts at first, because the network had not announced broadcast times on the two November Saturdays in question. When ABC announced conflicting times, the NCAA revoked Warner Cable's right to telecast the Ohio State games to the local area.

Hauser said (**Wall Street Journal**, 9-26-77) the network's move was not justified: "When an Ohio State game is being played, the people in Columbus who aren't in the stadium are listening to the game on radio, they aren't watching network TV."

In the Columbus instance, the network exclusive rights prevented siphoning. Whether that will always be the case is unsure. Both the Congress and the FCC are looking at the influence of exclusive contracts on programming. The CATV challenge in Columbus could become part of a precedent for changes in the law concerning exclusivity.

The economics of an exclusive contract also comes into play in CATV-broadcaster relations in the world of feature film broadcast rights. Yet filmmakers find themselves both for and against CATV, depending upon which element of modern film distribution is concerned. At present, film studios still must rely on large network contracts to produce any real profit. Cable TV consultant Dick Lubic said it's unlikely filmmakers will abandon the networks until CATV can pay as much for broadcast rights.

> One million subscribers on pay systems would represent income to each of the studios of about $300,000. The studios don't keep all of the dollars but, let's say they receive as much as fifty percent, or $150,000. That amount of money is not very meaningful to them.
>
> And if Home Box Office had ten million pay subscribers, the amount of money that the studios would receive still wouldn't be too meaningful compared to the theater and network purchases. . . . [A]t present, the cable and pay television promoters have to prove they have the road to utopia, and it's going to be a long trek.[10]

Large film studios do not only produce films for theatrical release, they produce many of the network television series. In this area as well they have a vested interest in preserving the status quo in their relationship to over-the-air TV. Motion Picture Association of America President Jack Valenti says pay-TV threatens those profits. Valenti says film companies presently earn about $272 million from prime-time series syndication. A production company can suffer five years of deficit financing as a network supplier before syndication begins. But a cable system has the ability to pick up a distant signal and transmit it into another market where no station has purchased it. Because the program is available in the area, Valenti says it's less likely a broadcaster will purchase it.[11]

The MPAA is fighting to retain some elements of exclusivity and a limitation on the number of signals a cable system can bring into the market. Valenti says importation threatens to reduce the revenue potential of syndicated programming. But the major studios are pushing two ways at once in their desire to rely on network revenues for feature films for the time being, and their desire to stave off distant signals in the local areas.

In the long term, filmmakers claim pay-TV and theatrical films serve two different markets. Industry figures indicate 30 percent of the population between 12 and 25 years of age accounts for 60 percent of the theater-going public. Pay-TV serves an older audience that has lost the movie-going habit. Columbia Pictures Vice President Allen Adler said, "These studies buttress our belief that pay cable will augment, rather than compete with, our theatre sales."[12] With long-term prospects of pay-TV as a potential market, film in-

terests will have a hard time over the next several years trying to decide which side in the CATV-broadcast dispute to get on.

The 'Home Box Office' Case

The FCC for many years made an effort to protect the networks and local stations from siphoning, with strict rules over the kinds of programming allowed on CATV. The regulations permitted feature films on pay-TV only if less than two years or more than 10 had elapsed since their theatrical release. Sports events were available for pay-TV if they had not been broadcast over the air within the previous two years. And series-type programs could not be siphoned for CATV at all. Cable systems had been able to circumvent the rules by incorporating the pay-TV charge into the basic monthly subscription rate, rather than on a per-program basis. One New York cable system used that loophole to offer Rangers hockey and Knickerbockers basketball games to subscribers.[13]

The National Association of Broadcasters favored the regulations and said the rules encouraged pay-TV to develop innovative programming. By removing restrictions on series programming, NAB said the FCC risked damaging its own effort to bring about new program choices.[14]

In 1977 the U.S. Court of Appeals in Washington, D.C., upset the status quo with its ruling in **Home Box Office v. FCC.** The court ruled that the First Amendment does not permit the same type of federal regulation of pay cable that it does of conventional, advertiser-supported television. In striking down FCC pay-cable programming restrictions, the court found the commission did not show that the limitations were necessary to further an "important government interest."[15]

The commission was unable to convince the court whether the alleged siphoning phenomena was real or imagined:

> [T]he Commission has nowhere spelled out even a theory of the dynamic which could result in loss of broadcast television service to regions not served by cable. Nor is such a dynamic readily apparent. For example, cablecasters are unlikely to withhold feature film and sports material from markets they do not serve since broadcast of this material in such markets could not reduce the potentia. cable audience and because exhibition rights to this material would undoubtedly have substantial value. In these circumstances, the postulated loss of regional service is too speculative to support jurisdiction.[16]

The appeals court also had difficulty understanding FCC protection of feature films in particular.

> . . . with regard to feature films we question how the Commission, which has stated that it has no criteria by which to distinguish among formats, could have determined that feature films are a sufficiently unique format to warrant protection. The record demonstrates that broadcasters are increasingly substituting made-for-television movies — for which "siphoning" is not a problem since the broadcasters own the copyrights — for feature films.[17]

An attempt to control the content of CATV cablecasts was, to the court, "so fraught with the potential for impingement upon First Amendment rights that it should not be sanctioned by implication."[18] Although the court said the FCC could not regulate content, the FCC could apply objectives in regulation for which it could legitimately regulate the broadcast media.

The **Home Box Office** decision turning aside the siphoning protection raised the ire of the broadcasters. But CATV interests felt the ruling did not go far enough in that the networks still had recourse to long-term contracts with filmmakers that would permit them to stop for years the cablecast of films now permitted under the court ruling. The FCC decided to wait a while to see if the 1977 court decision would have any effect in freeing up film broadcast rights before the commission would take any action on the long-term contracts and exclusive rights. CATV chief at the FCC, James Hobson, said the commission would wait to see how the marketplace distributed films.[19]

Even before the **Home Box Office** decision, the Office of Telecommunications Policy had drawn its own conclusions about the projected economic impact of CATV. Paraphrasing its report,

> 1. CATV does not offer an immediate threat to the public in driving over-the-air broadcasting out of business.
> 2. CATV does pose an economic threat to the broadcasters, but only because it threatens monopolistic position. More competition will result in lower profits for the television industry, and the value of the television license will fall. The effects are not broad enough to cause wholesale reductions in the number of broadcast stations.
> 3. Existing television provides sufficient information to enable government officials to undertake a market-by-market analysis of cable. But it's hard to make detailed predictions of which stations might fail.[20]

Distant Signals and the Local Station

Pay-TV has the potential to restructure broadcasting. But it represents only an indirect threat to most station owners. They are more apt to do all they can to stop CATV systems from importing distant signals into the market. The local station owner claims he will be forced off the air if he has to compete with the signal from a much larger city. In that sense, the broadcaster believes distant signal importation serves to reduce the diversity of local channels.

The Supreme Court has upheld the right of the FCC to provide some measure of protection for local television stations. Commission authority over the distant signal question can be traced to the Supreme Court decision in **U.S. v. Southwestern Cable** in 1968. A local station owner in San Diego had complained because a CATV system transmitted signals of Los Angeles broadcasting stations. KFMB-TV contended it was affected adversely, in conflict with the public interest. The court summarized the FCC's contention that

> importation of distant signals into the service areas of local stations may also "destroy or seriously degrade the service offered by a television broadcaster" . . . and thus ultimately deprive the public of the various benefits of a system of local broadcasting stations. In particular, the Commission feared that CATV might, by dividing the

> available audiences and revenues, significantly magnify the characteristically serious financial difficulties of UHF and educational television broadcasters.[21]

The court ruled the FCC had the power to regulate cable television.

But does the threat to the local broadcaster really constitute a threat to the public interest? One economist at the Office of Telecommunications Policy cast some doubt on that:

> An important point to realize is that the audience diversion argument really works against those who would block cable development. Audience diversion can be important enough to threaten many broadcasters only if nearly everyone in a market subscribes to cable and shifts his viewing to new cable services. Yet, if this phenomenon occurs, it is because cable services are generally regarded as superior by most households — in which case there is little reason to protect over-the-air broadcasters.[22]

The FCC chose, however, to provide some measure of protection for broadcasters, regulations the National Cable Television Association in 1977 asked the FCC to remove. The NCTA approached Congress in its House Communications Subcommittee review of the Communications Act of 1934 and proposed putting broadcasters on the defensive against CATV deregulation. Under the plan, if a broadcaster was hurt by distant signals, he could go to the FCC to seek individual relief a year after CATV regulation ceased. The burden would have shifted to the broadcaster to demonstrate harm and to provide financial data to prove his claims.[23] Within a year, the FCC chose on its own to follow a similar path.

For many years since the **Southwestern** decision, the FCC had restricted a CATV system's right to duplicate local programming by importing distant signals. The regulations controlled the zone of protection around each broadcast station. CATVs could import distant signals frequently by blanking out programming that was the same as the local stations. In this fashion, local audiences were forced to look at local commercials in network programming duplicated on both the distant and local station.

The commission decided in 1977 to change its zones of protection. Instead of basing them on a station's signal strength, they would be based on standard 35- and 55-mile protective limits. A group of CBS affiliates and other interested broadcasting parties took the FCC to court over the matter, and the U.S. Court of Appeals in Washington, D.C., upheld the FCC in its decision in **CBS Network Affiliates v. FCC.**

> One attraction of cable television is its ability to import signals from distant stations that cannot be picked up "off the air" on conventional television sets. Importation of distant network programming, however, can injure a local network affiliate by fractionalizing the market for its network offerings.[24]

The court said the FCC has provided some nonduplication rules because

> First, importation of distant duplicative network signals was seen as unfair competition with the local network affiliates. . . . Second, this practice threatened the financial viability of local affiliates and to that extent disserved the public interest.[25]

But the court upheld the FCC's limitation on the distance of signal protection, despite the contention of the network affiliates that it would hurt them economically. "This may well be the dominant effect," a concurring opinion by Justice Leventhal said. "The new rules may, indeed, work a substantial shift in economic position, but it is not one that the courts can reassess on the ground of lack of reasoned decisionmaking."[26]

The court rejected the argument that the new zones drastically reduce local stations' nonduplication protection. Fixed mileage zones were designed to protect "the heart of the station's market" and didn't alter the basic FCC policy of regulating distant signal importation by cable systems to prevent unfair competition with local network affiliates.[27] In 1978, the FCC took the court's ruling a step further and exempted from nonduplication requirements the rule that a cable system delete network programming on any station which has a significant number of viewers among non-cable subscribers in the area.[28]

The FCC Approached Deregulation

Two FCC decisions in the fall of 1978 have done even more to shake up the distant signal controversy. The rulings concern so-called "superstations." The era of superstations began when CATVs began telecasting WTCG-TV, Atlanta, all over the nation via Satcom and Southern Satellite. In October 1978, the FCC opened the way to an even greater penetration of superstations. The commission endorsed an "open entry" policy for resale carriers that feed local stations to CATVs. Other major independent stations could join WTCG in the push for CATV markets outside the stations' normal broadcast area. WGN-TV, Chicago, has expressed interest. Other possible independents include KTVU-TV, Oakland-San Francisco; KTTV-TV, Los Angeles; and WPIX-TV, New York.[29]

Since superstations receive no direct compensation from the CATVs that distribute their signals, they will have to challenge the networks for the national advertising dollar. WTCG distributed a new rate card to reflect its projected January 1979 penetration of 2.5 million cable subscribers. The Atlanta station claims it can deliver a cost per thousand two-thirds that of the networks and deliver audiences with twice the per capita income. WTCG expects total network audience shares to drop 50 percent during the next five to 10 years with the proliferation of superstations. The networks may soon be as eager to challenge distant signal importation as the affiliates are now.

The FCC continued its move toward deregulation in the fall of 1978 with another ruling that finally shifted the burden of proof of economic harm to the local stations. Prior to October, a CATV seeking waiver of the rule limiting distant signals was required to make two showings:

> (1) that the importation would not adversely affect the ability of the stations in their area to serve the public as a result of loss in either audience or revenues; (2) that there were unique circumstances that justified the waiver.[30]

Under the new policy, the second showing is no longer required. The CATV system must show only that the local station would not suffer as a result of the proposed signal importation. If the FCC agrees that the CATV system has a good case, particularly in the telecast of an independent distant signal, it will give the station an opportunity to offer a rebuttal, a rebuttal **Broadcasting** magazine said would put the station's finances at issue.[31]

Along with the decision in the WTCG case, the latest FCC ruling could lead to a proliferation of superstations. The NAB said the commission was engaging in "legislation by waiver." The NCTA said it regarded the action as an interim measure until the FCC completes its cable-broadcast inquiry. NCTA President Robert Schmidt expressed hope the commission would develop a policy whereby cable is regulated in terms of its impact on the public interest, rather than its impact on the "private interest" of broadcasters.

As to the eventual threat of the superstations, FCC CATV Bureau Chief Philip Verveer said it's too early to tell, although the staff is looking into the problems caused by satellite-fed CATV network systems. "For the moment," he said, "the critical element is that there is not enough cable out there, even if the station were carried to every home, to do what's been attributed to the superstations. These stations probably won't end up with larger audiences than those of independent stations in New York."[32]

CATV and the Law

The CATV controversy continues. The federal government seems to be shifting its position toward deregulation. Both the FCC's most recent rule-makings and proposed revisions of the Communications Act of 1934 point in that direction. Scarcity has for years justified the regulation of all facets of broadcasting: There simply were not channels for all the voices that demanded attention. The thrust of proposals to deregulate the broadcast industry takes the view that if competitive forces in the marketplace are allowed to take command, regulation will no longer be necessary to allocate resources. In one of his first public statements on CATV, FCC Chairman Charles Ferris told the NCTA

> I have noticed in my first few months at the commission that you often have an ambivalent view of regulation and competition. . . .
>
> But you really were not competing with broadcasters — except perhaps in legal pleadings in the regulatory forum. In the marketplace you have largely only helped broadcasters compete more effectively with each other. You have brought UHF stations into technical parity with VHF stations. You have imported distant signals to compete with local ones. But these are services that can be performed by improved television sets, or by translators linked to satellite dishes. You have only just begun to actually compete with broadcasters by offering your own program services.[33]

Ferris told the cablecasters, "You have called yourself a medium of choice, but often you have only provided an echo." The chairman announced an FCC investigation into CATV's economic impact. The inquiry is looking at economic data, but the FCC will maintain its present goals in regulation, "to maintain our system of over-the-air broadcast service, and to foster cable growth in order to provide diversity of programming and broadband communications service." The commissioners continue to believe both elements are compatible.[34]

In addition to the FCC investigation, Congress is considering its own changes in present broadcast regulation. Rep. Lionel Van Deerlin, D-Calif., says the rewrite will clear obstacles from the path of new technologies and promote diversity of communications.[35] His proposed revisions would remove cable from federal regulation. The Senate is also working on revisions to the Communications Act. The communications subcommittee chairman, Ernest Hollings, believes "the marketplace should operate wherever possible." But Hollings would act to control some siphoning. "I fear that if we do not act on sports siphoning now, it is only a matter of time before the Olympics or World Series or Super Bowl will be bought up. . . ."[36]

But the prospect of federal deregulation of CATV may not be completely welcomed by the CATV operator. Besides the legal hassles of dealing with local governments for licensing permits, CATV is also threatened by the growth of new technologies. Democratic Rep. John Murphy of New York says (New York **Times**, 5-4-78) the ultimate fear of both CATV and television "is that there will be a single wire coming into the home — a wire installed and maintained by AT&T, made up of optical fibers, and offering enough channel capacity to carry ordinary telephone messages, an abundance of television programs and all sorts of data communications." The phone company is already well placed to make the necessary connections. Proposals in the rewrite of the Communications Act would include permission for AT&T to enter TV markets.

Other technological developments that could upset the shaky status quo include VHF drop-ins in saturated markets and a new tuner developed by Texas Instruments that can divide the electromagnetic spectrum to increase the number of both VHF and UHF stations capable of being received through the air. UHF parity could double or triple competition.[37]

Conclusion

The seemingly unlimited potential of communications technology and the breakdown of the regulatory barriers imply some sort of future program diversity, either on CATV or over the air. Communications consultant Herbert S. Dordick has said that

> before the end of the century, all of TV will be on some sort of wire. . . . I believe that one day the networks will decide not to be networks and will concentrate on program production. They'll get others to pull together ad-hoc networks.
>
> The future as we see it is no longer the future. We are ad hocing networks now, picking up fragmented audiences. The mass media is becoming no longer the mass media. Or, as somebody said, the future of TV is radio.[38]

There is little point to making broad predictions about whether pay-TV will eventually out-compete the networks for films and sports, or whether distant signals will so fragment the local markets that local broadcast stations can no longer exist. The views of the CATV operators and broadcasters are by their nature biased in favor of their own media. But recent trends in legislation, regulation and broadcast technology most likely will change the face of American telecasting. It's too early to tell how soon America will be a wired nation, or

whether it will be wired with coaxial cable or glass. After 20 years, however, new ideas and technologies are being given the chance to compete for the audience. As CATV shakes itself free of federal regulation, we may see whether, as FCC Chairman Ferris wondered, cable is a medium of choice or only "an echo."

FOOTNOTES

1. James Monaco, "Neovideo: One Step Away," **American Film**, November 1978, p. 29.
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3. Monaco, p. 32.
4. **Ibid.**
5. "A short course in cable, 1978," **Broadcasting**, 1 May 1978, p. 32.
6. "Networks use Hart hearings as forum for blasts at pay cable," **Broadcasting**, 14 July 1975, p. 27.
7. Arthur R. Taylor, **Does the American Family Need Another Mouth to Feed?** (New York: CBS, 1978), p. 9.
8. **Ibid.**
9. "Another face off on pay cable in House hearing," **Broadcasting**, 2 August 1976, p. 53.
10. Dick Lubic, "It Will Be a Long Trek to the Utopian Land of Pay Cable," **TV Communications**, October 1975, p. 58.
11. Will Tusher, "Valenti Warns That Cable Growth May Cut Into TV Syndication Dollars," **Variety**, 17 May 1978, p. 437.
12. Paul Harris, "Pay Cable Living in Euphoria, U.S.A.," **Variety**, 7 April 1976, p. 49.
13. Taylor, p. 13.
14. "NAB Asks Court of Appeals to Block FCC Decision on Pay TV's Series Programs," National Association of Broadcasters news release, 31 December 1975, p. 1.
15. "Pay Cable Program Restrictions Found to Violate First Amendment," **United States Law Week** 45 (12 April 1977):1153.
16. **Home Box Office v. FCC**, 2 Med. L. Rptr. 1561 (1977) at 1576-77.
17. **Ibid.** at 1575.
18. **Ibid.** at 1600.
19. "High Court frees pay cable to bid for sports, flicks," **Advertising Age**, 10 October 1977, p. 114.
20. Braunstein, p. 93, citing **Deregulation of Cable Television**, p. 54.
21. **U.S. v. Southwestern Cable**, 1 Med. L. Rptr. 2247 (1968) at 2254.
22. Braunstein, p. 96, citing **Deregulation of Cable Television**, p. 54.
23. "NCTA pulls out all the stops in seeking end to all distant signals rules," **Broadcasting**, 19 September 1977, p. 42.
24. **CBS Network Affiliates v. FCC**, 2 Med.L.Rptr. 1693 (1977) at 1694.
25. **Ibid.**
26. **Ibid.** at 1697-98.
27. "Pay Cable Program Restrictions," p. 1153.
28. Federal Communications Commission, "Cable Television Services," **Federal Register** 43, no. 75, 18 April 1978, 16337.
29. "Superstation breakthrough," **Broadcasting**, 30 October 1978, p. 25.
30. "Distant signals closer and closer," **Broadcasting**, 6 November 1978, p. 24.
31. **Ibid.**
32. **Ibid.**
33. Charles Ferris, "Remarks of Charles D. Ferris, Chairman, FCC, before the 27th Annual Convention of the NCTA," **Broadcasting**, 8 May 1978, p. 32-33.
34. "Just the facts: FCC is going after hard data on economics of cable, broadcast," **Broadcasting**, 13 June 1977, p. 28.
35. "Cable in 1978: about to break $1 billion barrier," **Broadcasting**, 1 May 1978, p. 26.
36. "Hollings offers a peek under the tent at his cable legislation," **Broadcasting**, 13 February 1978, p. 30.
37. Monaco, p. 30.
38. Jim Harwood, "What Will Stall Cable TV? Broadcasters and Congress," **Variety**, 5 October 1977, p. 64.